

**REMARKS/ARGUMENTS**

Claims 23, 24, 37, 39-42 and new claims 43-50 are pending in the application. Reconsideration and a withdrawal of the rejection is respectfully requested.

Applicant submits the following remarks in response to the August 9, 2010 Office Action. An RCE is being filed herewith to have the amendment considered. The pending claims are not taught, suggested or disclosed by the cited references and should be patentable. Reconsideration and a withdrawal of all outstanding rejections is requested and warranted.

A summary of the case is as follows. In the office action of December 3, 2008, the USPTO indicated that claims 10 and 12 contained allowable subject matter, and therefore, applicant, amended claim 37 to include the feature of allowable claim 10. Claim 12, also previously indicated to be allowable, was rewritten and presented as new claim 40. The Office Action of July 30, 2009 set forth new grounds for rejection of the claims. Applicant responded, and the office action of April 30, 2010 was issued. Applicant responded to the April 30, 2010 office action, and the instant office action of August 30, 2010 was issued, to which the present Amendment addresses.

Applicant respectfully traverses the rejections in view of the above amendments and new claims, and the remarks presented herein.

**THE SECTION 112 REJECTIONS**

Claim 24 stands rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description, and as lacking enablement. The section 112

rejections are respectfully but strenuously traversed, and reconsideration and a withdrawal of the rejections are hereby respectfully requested.

Although Applicant believes that claim 24 as previously presented is supported by the Applicant's disclosure, in an effort to more particularly articulate the language of the specification and in order to facilitate prosecution, Applicant has amended claim 24 to recite a bulking agent as a component of the dough. Accordingly, the rejection is believed to be moot in view of the amendment.

For these reasons, the rejection with respect to claim 24 should be withdrawn.

Applicant is pleased that the section 112 rejection with respect to claims 37, 39 and 40 has been withdrawn.

#### THE 103(a) REJECTION OVER TYE SHOULD BE WITHDRAWN

Claims 23, 24, 37, 39 and 40-42 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Tye (5,308,636). This rejection is respectfully but strenuously traversed, and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

Applicant's invention relates to addressing the difficulty with functional foods, where taste may be contraindicated. That is, although a functional food provides physiological benefits besides mere nutrition, it may not be eaten because taste or texture is found wanting. In addition, the present invention is designed to provide a nutritional product that may assist an individual in treating various conditions. For example, excess carbohydrates in an individual's diet may be

indicated in various metabolic disorders including obesity, diabetes, heart disease, etc. Moreover, low carbohydrate diets have increasingly become scientifically acceptable. The present invention provides functional-like food benefits with satisfying taste.

According to one embodiment, the present invention desires to provide a food product that has a desired texture. Applicant's invention accomplishes this by providing a novel improved dough that is used to produce a food product. The improved dough includes a mixture consisting of konjac glucomannan and animal based protein concentrate. Applicant has disclosed that the mixture of konjac and animal based protein concentrate, when heated to temperatures above 100C provides a material that is less gummy and which may be used in various foods. The specification discloses that the food with mechanical features is prepared using the "admixture of konjac glucomannan". Traditionally, as Applicant points out in the specification, in order to ingest konjac foods, increased chewing was required, and the texture was not appealing. The present invention, by providing an admixture incorporating the konjac glucomannan and the animal based protein concentrate, and producing a food product, such as a dough, that includes as an ingredient thereof, the admixture. This provides the food product with a texture that is non gummy.

The admixture is an ingredient of the claimed improved dough, and is present as a texturized component claimed in the dough product. Therefore, the dough includes a texturized component consisting of konjac and animal based protein concentrate as a component thereof. This would be accomplished with the

present invention, and the claimed component admixture. The cited reference fails to suggest or disclose the present invention.

According to the present invention, as recited in amended claim 37, an improved dough for cooking into a food product is claimed, where the dough comprises an admixture, the admixture consisting of konjac glucomannan and animal based protein concentrate, and the admixture being recited to have a texture that is predetermined as a result of the mixture of the admixture constituents, the konjac and animal based protein concentrate that are present, and that have been heated together to above 100C.

The present invention provides that the improved dough for cooking into a food product includes the admixture as part of the dough.

First, the office action stated that the admixture of the claims is open to other ingredients. Applicant has amended claim 37 to recite that the admixture consists of the components to more particularly distinguish the admixture from the claimed product that the admixture provides. Therefore, claim 37 recites a claim that more particularly distinguishes the present invention.

New claim 43 depends from claim 37 and recites that the improved dough that comprises the admixture (which is recited to contain two components, namely, the animal based protein concentrate and the konjac glucomannan) also contains at least one additional component to produce the dough, which is recited to include a bulking agent, where the additional component comprises at least one ingredient of said dough and wherein said admixture comprises at least one other ingredient of said dough. Accordingly, new claim 43 recites that the claimed

dough includes the admixture as one component and has at least another component, a bulking agent.

New claim 44 has been added to recite that the dough of claim 37 includes the admixture component and additionally includes at least one additional component in combination with the admixture said improved dough comprising a formation that includes said texturized admixture and said at least one additional component, wherein said improved dough has a texture that is non gummy.

Therefore, the claim now recite that the admixture consists of the two components being texturized by heating to over 100C.

Second, the office action also states that the Applicant pointed out that the claimed invention relates to a flour that is produced and used as an admixture, but that that feature was not part of the claims. Applicant refers to the specification, at p. 7, lines 3-4.

Nutritionally, the foregoing example provides a high fiber, low carbohydrate substance that may be used as a flour, base, etc.

A gummy gel product is avoided by the present invention.

Accordingly, new claim 48 has been added to recite this feature of the claimed dough, where according to embodiments of the Applicant's invention, a flour is used as an admixture which is a component of the dough. Applicant has added new claims 45 and 49 to more particularly recite that the invention provides a flour as the admixture, and that the dough is comprised of the admixture flour. New claim 45 recites that the texture is a flour texture that the admixture has.

Claims 45 and 48 are distinguishable over Tye in that the flour is specifically recited as a component of the claimed dough. Claim 45 specifically recites a flour as the admixture, and in addition, that the admixture consists of konjac and animal based protein concentrate.

New claim 48 recites an improved flour for use in making cooked products, said improved flour comprising:

- konjac glucomannan and

- animal based protein concentrate,

wherein said flour comprises konjac glucomannan and animal based protein concentrate in a ratio by volume which provides said flour with a predetermined texture, the mixture of said konjac glucomannan and said animal based protein concentrate being heated to above 100 degrees Celsius, wherein said flour is used as a component of a cooked food product.

Applicant's claimed flour is not taught, suggested or disclosed by Tye.

Applicant previously presented reasons, and, through the amendments made to the claims, more particularly distinguishes the present invention over Tye.

Applicant had previously pointed out that Tye taught something other than the present invention, and that the reliance on the Tye reference was inconsistent. Claim 45 specifically claims a flour as a component of the dough, and not the gel that Tye discloses. The rejection in the office action previously relied on and cited to Tye for an alleged disclosure of pre-hydrating konjac, by contending that Tye, at col. 4, lines 18-26 discloses this at 25° to 100° C for 5 to 30 minutes.

Applicant pointed out that this would result in a gel, which Tye discloses results. Applicant desires to avoid the gumminess. The office action acknowledged the Applicant's asserted distinction, and that is now specifically recited in claims 45 and 48.

Accordingly, for the above reasons, the present invention should be patentable over the Tye.

Third, the present office action rejection asserts that the claims are open to partially cooked dough. Applicant's invention is not disclosed by Tye. The claims have been amended to recite that the admixture is a texturized component of the dough, and therefore, the dough would be cooked in addition to the texturized component being treated with the above 100C. Applicant claims an improved dough for cooking into a food product. Additional claim 49 recites a flour, which is not taught, suggested or disclosed by Tye.

The office action also discusses partially cooking foods for further storage (e.g., by refrigerating or freezing the final product). Here, Applicant's claims recite an admixture that is a component of a dough (or flour in claim 49). If the dough is frozen or refrigerated, it still is something different than the claimed invention, since, merely, heating the dough, would not serve to then have as a component of the dough, namely, Applicant's admixture that has been texturized by heating the konjac glucomannan and animal based protein concentrates that are the constituents of the admixture, since the admixture would need to be a component of the dough, and, as claimed, the admixture as a component is a specifically textured admixture. Therefore, the admixture would

need to have been added to the dough as a component thereof before the dough was cooked, and the admixture would already have to had been texturized by heating to the above 100C.

For these reasons, the amended claims and new claims distinguish the invention over the cited reference, and the rejection should be withdrawn.

Applicant also supports the claimed invention with reliance on the CCPA decision. The CCPA has recognized the patentability of a composition that recites an admixture as part of the claimed composition. See *In re Herrick*, 55 CCPA 1238, 397 F.2d 332, 158 USPQ 90 (CCPA 1968) (claim reciting an admixture to be patentable). In *In re Herrick*, the CCPA considered a claim reciting an admixture to be patentable:

4. The resin-forming composition comprising a polymethylol phenol in the form of a heavy syrup having a mole ratio of combined formaldehyde-to-phenol of from 2.3 to 2.52 which is water insoluble containing no free formaldehyde and being free of inorganic material, and an alkali lignin which is free of inorganic material in **admixture** with the polymethylol phenol, said mixture being soluble in organic solvents including methanol and being condensible by heating to an insoluble, infusible resin which has low water absorption and high dielectric properties.

Applicant's invention is not taught, suggested or disclosed by the cited references and should be patentable.

In addition, claim 37 recites a dough where gas bubbles are introduced into the dough through pressurization of the dough. The cited references do not appear to recite a pressurized dough. Again the pressurization would take place



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after the admixture is heated, but before the dough is heated to a cooked food product. This provides a further distinction over Tye.

New claims 46 and 47 have been added to include a further ingredient of moisture in the dough, with claim 47 particularly reciting moisture components. New claim 50 has been added to round out coverage for the invention, and is essentially claim 37, as now amended, but without the gas bubbles being introduced. New claims

Reconsideration and a withdrawal of the 103(a) rejection is respectfully requested.

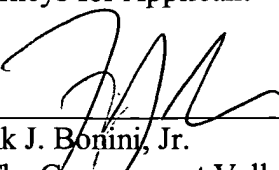
If further matters remain, the Examiner is invited to telephone the Applicant's undersigned representative to resolve them.

If necessary, an appropriate extension of time to respond is respectfully requested.

The Commissioner is authorized to charge any additional fees which may be required to Patent Office Deposit Account No. 05-0208.

Respectfully submitted,  
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